SINGLE BENCH

(4)

P.R. No. 3359/06
Presented by Shri A.K. Singh
dated 5/7/06

c.f. 100/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 3313 /2006

PETITIONER: G.L. Sahu, son of Late K.R. Sahu, aged about 48 years, Sub Divisional Officer, Dongergarh Division, Khairagarh, Rajnandgaon.

Vs

RESPONDENT: State of Chhattisgarh Through: the Secretary, Ministry of Forest, D.K.S. Bhawan, Raipur.

RECEIVED-COPY
CLERK to A.G. BILASPUR
5/7/06

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 3313/06 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7.7.2006

Shri B.P. Sharma, Adv. for the petitioner.

Shri Satish Gupta, Dy. Govt. Adv. for the respondents on advance copy.

Heard.

By this petition the petitioner has questioned the legality, propriety and correctness of order dated 29.6.2006 whereby the petitioner, who is working as Sub Divisional Officer, Dongergarh, Khairagarh, has been transferred on the post of Superintendent, Gomarda Forest Sanctuary, Raigarh within a short span of time arbitrarily, mala fidely and against the transfer policy of the State Government declared for the year 2006-07.

The case of the petitioner is that the petitioner is working as Sub Divisional Officer in the Forest Department, firstly vide order dated 6.10.2003 he was transferred from Forest Division, Durg to Forest Division, Bhanpur and the petitioner joined there. Thereafter, within a period of two years vide order dated 3.9.2005 the petitioner was transferred from Bhanpur to Dongergarh i.e. present place of posting and the petitioner joined there on 14.9.2005 and now the petitioner has again been transferred within a period of 9 months vide impugned order dated 29.6.2006 from Dongergarh to Raigarh. The said transfer order is in contravention of the transfer policy issued by the State Government, as the Clause (4) of the said transfer policy provides that "minimum transfer should be made and as far as possible transfer should not be made before completing three years of service. If the transfer is made on the ground of complaint, then it should be made after conducting the preliminary

(पीछे देखिये)

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enquiry and if prima-facie the complaint is found correct, then only the employee should be transferred".

I have heard learned counsel for the parties.

Shri Sharma, learned counsel for the petitioner submits that the transfer of the petitioner has been made against the operative guidelines issued by the State Government and that too without application of mind, therefore, as per decision of the Hon'ble Apex Court in the matter of **Kendriya Vidyalaya Sangathan Versus Damodar Prasad Pandey and others** reported in **(2004) 12 Supreme Court Cases 299**, the impugned transfer order be quashed.

On the other hand, Shri Gupta, learned Dy. Government Advocate for the State submitted that there is nothing in the petition which shows that the transfer has been effected on the ground of malafide. The transfer policy issued by the Government is normally considered and the clause of transfer policy on which learned counsel for the petitioner is placing reliance envisages that *'as far as possible transfer should not be made', there is no mandatory provision that in any case the employee cannot be transferred before three years".*

In the matter of transfer of a government employee the law is almost settled and as per settled law the transfer order cannot be challenged unless; (1) the same is passed by incompetent authority; (2) based on malafide grounds or (3) contrary to the statutory rules. In the case of **Union of India Vs. S.L. Abbas** reported in **(1993) 4 SCC 357** the Hon'ble Apex Court held that 'the guidelines issued by the Government do not confer upon the employee legally

(पीछे देखिये)

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

enforceable right. Order of transfer cannot be interfered by the court unless it is vitiated by malafide or made in violation of statutory provisions'.

Similarly, in the matter of **Union of India Vs. Janardhan Debanath** reported in **2004 (4) SCC 245**, the Hon'ble Apex Court held that:

> " No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned".

In the matter of **Abani Kanta Ray Vs. State of Orissa** reported in **1995 Supp (4) SCC 169** the Court held that "unless the order of transfer is shown to be clearly arbitrary or is visited by mala fide or is made in violation of any operative guidelines or rules governing the transfer, the court should not ordinarily interfere with it".

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Sub-clause (4) of Clause-2 of the transfer policy issued by the State Government dated 26.5.2006, as has been mentioned above, on which learned counsel for the petitioner is placing heavy reliance that the minimum tenure of an employee has been kept as 3 years, whereas, the petitioner has been transferred within a short span of 9 months. The said sub-clause (4) envisages that 'as far as possible the transfer should not be made before three years', but there is no clear-cut bar in transferring the employee prior to 3 years and it is settled law that in the exigency of service or on administrative ground an employee can be transferred at any time. The petitioner's service record shows that he is working in the Rajnandgaon district since 2003 i.e. for two years he worked at Bhanpur and thereafter he is working at Khairagarh, now he has been transferred out of the district to another district i.e. Raigarh and there is nothing on record which shows that the transfer of the petitioner is an outcome of mala fide. The said transfer policy, as has been held by the Hon'ble Apex Court in the judgments cited above, is not legally enforceable and as such, I do not find any substance in this petition, same is liable to be dismissed and accordingly, it is dismissed.

Consequently, M.(W.)P. No.2539/06 also stands disposed of.

However, the petitioner will be at liberty to bring this fact to the notice of the Government by way of representation and it is for the appropriate authority to consider the representation of the petitioner and pass appropriate orders in accordance with the law.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

(पीठ पीठासीन)